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SENATE BILL 624

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO CHILDREN; AMENDING PROVISIONS OF THE CHILDREN'S  
CODE TO RESOLVE PROBLEMS IN IMPLEMENTATION; PROVIDING A  
PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS. -- As used in the Children's Code:

A. "adult" means ~~[an individual]~~ a person who is  
eighteen years of age or older;

B. "child" means ~~[an individual]~~ a person who is  
less than eighteen years old;

C. "court", when used without further  
qualification, means the children's court division of the  
district court and includes the judge, special master or

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1 commissioner appointed pursuant to the provisions of the  
2 Children's Code or supreme court rule;

3 D. "court appointed special advocate" or "CASA"  
4 means a person appointed as a CASA, pursuant to the provisions  
5 of the Children's Court Rules [~~and Forms~~], who assists the  
6 court in determining the best interests of the child by  
7 investigating the case and submitting a report to the court;

8 E. "custodian" means a person, other than a parent  
9 or guardian, who exercises physical control, care or custody of  
10 the child, including [~~any~~] an employee of a residential  
11 facility or [~~any persons~~] a person providing out-of-home care;

12 F. "department" means the children, youth and  
13 families department, unless otherwise specified;

14 G. "foster parent" means a person, including a  
15 relative of the child, licensed or certified by the department  
16 or a child placement agency to provide care for children in the  
17 custody of the department or agency;

18 H. "guardian" means the person having the duty and  
19 authority of guardianship;

20 I. "guardianship" means the duty and authority to  
21 make important decisions in matters having a permanent effect  
22 on the life and development of a child and to be concerned  
23 about the child's general welfare and includes:

24 (1) the authority to consent to marriage, to  
25 enlistment in the armed forces of the United States or to major

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1 medical, psychiatric and surgical treatment;

2 (2) the authority to represent the child in  
3 legal actions and to make other decisions of substantial legal  
4 significance concerning the child;

5 (3) the authority and duty of reasonable  
6 visitation of the child;

7 (4) the rights and responsibilities of legal  
8 custody when the physical custody of the child is exercised by  
9 the child's parents, except when legal custody has been vested  
10 in another person; and

11 (5) when the rights of the child's parents  
12 have been terminated as provided for in the laws governing  
13 termination of parental rights or when both of the child's  
14 parents are deceased, the authority to consent to the adoption  
15 of the child and to make any other decision concerning the  
16 child that the child's parents could have made;

17 J. "guardian ad litem" means an attorney appointed  
18 by the children's court to represent and protect the best  
19 interests of the child in a court proceeding; provided that no  
20 party or employee or representative of a party to the  
21 proceeding shall be appointed to serve as a guardian ad litem;

22 K. "Indian child" means an unmarried person who is:

23 (1) less than eighteen years old;

24 (2) a member of an Indian tribe or is eligible  
25 for membership in an Indian tribe; and

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1 (3) the biological child of a member of an  
2 Indian tribe;

3 L. "Indian child's tribe" means:

4 (1) the Indian tribe in which an Indian child  
5 is a member or eligible for membership; or

6 (2) in the case of an Indian child who is a  
7 member or eligible for membership in more than one tribe, the  
8 Indian tribe with which the Indian child has more significant  
9 contacts;

10 M "judge", when used without further  
11 qualification, means the judge of the court;

12 N. "legal custody" means a legal status created by  
13 the order of the court or other court of competent jurisdiction  
14 that vests in a person, department or agency the right to  
15 determine where and with whom a child shall live; the right and  
16 duty to protect, train and discipline the child and to provide  
17 the child with food, shelter, education and ordinary and  
18 emergency medical care; the right to consent to major medical,  
19 psychiatric, psychological and surgical treatment and to the  
20 administration of legally prescribed psychotropic medications  
21 pursuant to the Children's Mental Health and Developmental  
22 Disabilities Act; and the right to consent to the child's  
23 enlistment in the armed forces of the United States, all  
24 subject to the powers, rights, duties and responsibilities of  
25 the guardian of the child and subject to any existing parental

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1 rights and responsibilities. ~~[An individual]~~ A person granted  
2 legal custody of a child shall exercise the rights and  
3 responsibilities as custodian personally, unless otherwise  
4 authorized by the court entering the order;

5 0. "parent" or "parents" includes a biological or  
6 adoptive parent if the biological or adoptive parent has a  
7 constitutionally protected liberty interest in the care and  
8 custody of the child. A parent retains all of the duties and  
9 authority of guardianship and legal custody of the child,  
10 unless otherwise limited or altered by court order;

11 P. "permanency plan" means a determination by the  
12 court that the child's interest will be served best by:

13 (1) return to the parent;

14 (2) placement with a ~~[person who will be the~~  
15 ~~child's]~~ fit and willing relative who will provide a permanent  
16 ~~[guardian]~~ home for the child;

17 (3) placement for adoption after the parents'  
18 rights have been relinquished or terminated or after a motion  
19 has been filed to terminate parental rights;

20 (4) placement in the custody of the department  
21 until the child reaches the age of majority, unless the child  
22 is emancipated, pursuant to the Emancipation of Minors Act; or

23 (5) placement in the custody of the department  
24 under a planned permanent living arrangement that meets the  
25 department's definition of emancipation and long-term foster

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1 care;

2 Q. "person" means an individual or any other form  
3 of entity recognized by law;

4 R. "preadoptive parent" means a person with whom a  
5 child has been placed for adoption;

6 S. "tribal court" means:

7 (1) a court established and operated pursuant  
8 to a code or custom of an Indian tribe; or

9 (2) any administrative body of an Indian tribe  
10 that is vested with judicial authority;

11 T. "tribal court order" means a document issued by  
12 a tribal court that is signed by an appropriate authority,  
13 including a judge, governor or tribal council member, and that  
14 orders an action that is within the tribal court's  
15 jurisdiction; and

16 U. "tribunal" means any judicial forum other than  
17 the court. "

18 Section 2. Section 32A-2-2 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 31) is amended to read:

20 "32A-2-2. PURPOSE OF ACT. --The purpose of the Delinquency  
21 Act is:

22 A. consistent with the protection of the public  
23 interest, to remove from children committing delinquent acts  
24 the adult consequences of criminal behavior, but to still hold  
25 children committing delinquent acts accountable for their

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1 actions to the extent of the child's age, education, mental and  
2 physical condition, background and all other relevant factors,  
3 and to provide a program of supervision, care and  
4 rehabilitation, including rehabilitative restitution by the  
5 child to the victims of the child's delinquent act to the  
6 extent that the child is reasonably able to do so; [~~and~~]

7 B. to provide effective deterrents to acts of  
8 juvenile delinquency, including an emphasis on community-based  
9 alternatives; and

10 C. to strengthen families to effectively  
11 participate in, contribute to and assume accountability for the  
12 deterrence of delinquency and the successful reintegration of  
13 children into homes and the community. "

14 Section 3. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 32, as amended) is amended to read:

16 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

17 A. "delinquent act" means an act committed by a  
18 child that would be designated as a crime under the law if  
19 committed by an adult, including the following offenses:

20 (1) pursuant to municipal traffic codes or the  
21 Motor Vehicle Code:

22 (a) any driving while under the  
23 influence of intoxicating liquor or drugs;

24 (b) any failure to stop in the event of  
25 an accident causing death, personal injury or damage to

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1 property;

2 (c) any unlawful taking of a vehicle or  
3 motor vehicle;

4 (d) any receiving or transferring of a  
5 stolen vehicle or motor vehicle;

6 (e) any homicide by vehicle;

7 (f) any injuring or tampering with a  
8 vehicle;

9 (g) any altering or changing of an  
10 engine number or other vehicle identification numbers;

11 (h) any altering or forging of a  
12 driver's license or permit or any making of a fictitious  
13 license or permit;

14 (i) reckless driving;

15 (j) driving with a suspended or revoked  
16 license; or

17 (k) any offense punishable as a felony;

18 (2) buying, attempting to buy, receiving,  
19 possessing or being served any alcoholic liquor or being  
20 present in a licensed liquor establishment, other than a  
21 restaurant or a licensed retail liquor establishment, except in  
22 the presence of the child's parent, guardian, custodian or  
23 adult spouse. As used in this paragraph, "restaurant" means  
24 any establishment where meals are prepared and served primarily  
25 for on-premises consumption and that has a dining room, a

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1 kitchen and the employees necessary for preparing, cooking and  
2 serving meals. "Restaurant" does not include [~~establishments~~]  
3 an establishment, as defined in regulations promulgated by the  
4 director of the special investigations division of the  
5 department of public safety, that [~~serve~~] serves only  
6 hamburgers, sandwiches, salads and other fast foods;

7 (3) any felony violation of the provisions of  
8 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations  
9 adopted by the state game commission that relate to the time,  
10 extent, means or manner that game animals, birds or fish may be  
11 hunted, taken, captured, killed, possessed, sold, purchased or  
12 shipped and for which a fine may be imposed or a civil damage  
13 awarded;

14 (4) any violation of Section 30-29-2 NMSA  
15 1978, regarding the illegal use of a glue, aerosol spray  
16 product or other chemical substance;

17 (5) any violation of the Controlled Substances  
18 Act;

19 (6) escape from the custody of a law  
20 enforcement officer or a juvenile probation or parole officer  
21 or from any placement made by the department by a child who has  
22 been adjudicated a delinquent child; or

23 (7) any violation of Section 30-15-1.1 NMSA  
24 1978 regarding unauthorized graffiti on personal or real  
25 property;

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1           B. "delinquent child" means a child who has  
2 committed a delinquent act;

3           C. "delinquent offender" means a delinquent child  
4 who is subject to juvenile sanctions only and who is not a  
5 youthful offender or a serious youthful offender;

6           D. "detention facility" means a place where a child  
7 may be detained under the Children's Code pending court hearing  
8 and does not include a facility for the care and rehabilitation  
9 of an adjudicated delinquent child;

10          E. "felony" means an act that would be a felony if  
11 committed by an adult;

12          F. "misdemeanor" means an act that would be a  
13 misdemeanor or petty misdemeanor if committed by an adult;

14          G. "restitution" means financial reimbursement by  
15 the child to the victim or community service imposed by the  
16 court and is limited to easily ascertainable damages for injury  
17 to or loss of property, actual expenses incurred for medical,  
18 psychiatric and psychological treatment for injury to a person  
19 and lost wages resulting from physical injury, which are a  
20 direct and proximate result of a delinquent act. "Restitution"  
21 does not include reimbursement for damages for mental anguish,  
22 pain and suffering or other intangible losses. As used in this  
23 subsection, "victim" means any person who is injured or suffers  
24 damage of any kind by an act that is the subject of a complaint  
25 or referral to law enforcement officers or juvenile probation

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1 authorities. Nothing contained in this definition limits or  
2 replaces the provisions of Subsections A and B of Section 32A-  
3 2-27 NMSA 1978;

4 H. "serious youthful offender" means an individual  
5 fifteen to eighteen years of age who is charged with and  
6 indicted or bound over for trial for first degree murder. A  
7 "serious youthful offender" is not a delinquent child as  
8 defined pursuant to the provisions of this section; and

9 I. "youthful offender" means a delinquent child  
10 subject to adult or juvenile sanctions who is:

11 (1) fourteen to eighteen years of age at the  
12 time of the offense and who is adjudicated for [~~at least~~] only  
13 one of the following specific offenses:

14 (a) second degree murder, as provided in  
15 Section 30-2-1 NMSA 1978;

16 (b) assault with intent to commit a  
17 violent felony, as provided in Section 30-3-3 NMSA 1978;

18 (c) kidnapping, as provided in Section  
19 30-4-1 NMSA 1978;

20 (d) aggravated battery, as provided in  
21 Subsection C of Section 30-3-5 NMSA 1978;

22 (e) aggravated battery upon a peace  
23 officer, as provided in Subsection C of Section 30-22-25 NMSA  
24 1978;

25 (f) shooting at a dwelling or occupied

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1 building or shooting at or from a motor vehicle, as provided in  
2 Section 30-3-8 NMSA 1978;

3 (g) dangerous use of explosives, as  
4 provided in Section 30-7-5 NMSA 1978;

5 (h) criminal sexual penetration, as  
6 provided in Section 30-9-11 NMSA 1978;

7 (i) robbery, as provided in Section  
8 30-16-2 NMSA 1978;

9 (j) aggravated burglary, as provided in  
10 Section 30-16-4 NMSA 1978;

11 (k) aggravated arson, as provided in  
12 Section 30-17-6 NMSA 1978; or

13 (l) abuse of a child that results in  
14 great bodily harm or death to the child, as provided in Section  
15 30-6-1 NMSA 1978;

16 (2) fourteen to eighteen years of age at the  
17 time of the offense and adjudicated for any felony offense and  
18 who has had three prior, separate felony adjudications within a  
19 three-year time period immediately preceding the instant  
20 offense. The felony adjudications relied upon as prior  
21 adjudications shall not have arisen out of the same transaction  
22 or occurrence or series of events related in time and location.  
23 Successful completion of consent decrees are not considered a  
24 prior adjudication for the purposes of this paragraph; or

25 (3) fourteen years of age and adjudicated for

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1 first degree murder, as provided in Section 30-2-1 NMSA 1978. "

2 Section 4. Section 32A-2-7 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 36) is amended to read:

4 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--TIME  
5 WAIVER. --

6 A. Complaints alleging delinquency shall be  
7 referred to probation services, which shall conduct a  
8 preliminary inquiry to determine the best interests of the  
9 child and of the public with regard to any action to be taken.

10 B. During the preliminary inquiry on a delinquency  
11 complaint, the matter may be referred to another appropriate  
12 agency and conferences may be conducted for the purpose of  
13 effecting adjustments or agreements that will obviate the  
14 necessity for filing a petition. At the commencement of the  
15 preliminary inquiry, the parties shall be advised of their  
16 basic rights pursuant to Section [~~32-2-14~~] 32A-2-14 NMSA 1978,  
17 and no party may be compelled to appear at any conference, to  
18 produce any papers or to visit any place. The preliminary  
19 inquiry shall be completed within the time limits set forth in  
20 the Children's Court Rules [~~and Forms~~].

21 C. When a child is in detention or custody and the  
22 children's court attorney does not file a petition within the  
23 time limits authorized by the Children's Court Rules [~~and~~  
24 ~~Forms~~], the child shall be released immediately.

25 D. After completion of the preliminary inquiry on a

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1 delinquency complaint involving a misdemeanor, probation  
2 services may notify the children's court attorney and recommend  
3 an appropriate disposition for the case. If the child has been  
4 referred for three or more prior misdemeanors within two years  
5 of the instant offense, probation services shall notify the  
6 children's court attorney and recommend an appropriate  
7 disposition for the case. The children's court attorney shall  
8 review the preliminary inquiry and the recommendations from  
9 probation services no later than thirty days after receipt of  
10 the preliminary inquiry, at which time a determination to file  
11 a petition with the children's court shall be made.

12 E. Probation services shall notify the children's  
13 court attorney of the receipt of any complaint involving an act  
14 that constitutes a felony under the applicable criminal law.  
15 Probation services shall also recommend a disposition to the  
16 children's court attorney. The children's court attorney shall  
17 review the preliminary inquiry and the recommendations from  
18 probation services no later than thirty days after receipt of  
19 the preliminary inquiry, at which time a determination to file  
20 a petition with the children's court shall be made.

21 F. The child, through counsel, and the children's  
22 court attorney may agree, without judicial approval, to a  
23 waiver of time limitations imposed after a petition is filed.  
24 A time waiver defers adjudication of the charges. The  
25 children's court attorney may place restrictions on a child's

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1 behavior as a condition of a time waiver. If the child  
2 completes the agreed upon conditions and no new charges are  
3 filed against the child, the pending petition shall be  
4 dismissed. If the children's court attorney files a new  
5 petition against the child, the children's court attorney may  
6 proceed on both the original petition and the new charges. The  
7 department shall become a party if probation services are  
8 requested as a condition of the time waiver."

9 Section 5. Section 32A-2-10 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 39) is amended to read:

11 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY. --

12 A. A person taking a child into custody shall, with  
13 all reasonable speed:

14 (1) release the child to the child's parent,  
15 guardian or custodian and issue verbal counsel or warning as  
16 may be appropriate;

17 (2) release the child to the child's parent,  
18 guardian or custodian upon their written promise to bring the  
19 child before the court when requested by the court [and]. If  
20 the parent, guardian or custodian fails, when requested, to  
21 bring the child before the court as promised, the court may  
22 order the child taken into custody and brought before the  
23 court;

24 (3) deliver the child to a place of detention  
25 as provided in Section [~~32-2-11~~] 32A-2-12 NMSA 1978;

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1 (4) deliver the child to a medical facility,  
2 if available, if the child is believed to be suffering from a  
3 serious illness that requires prompt treatment or prompt  
4 diagnosis; or

5 (5) deliver the child to an evaluation  
6 facility, if available, if the person taking the child into  
7 custody has reasonable grounds to believe the child presents a  
8 likelihood of serious harm to himself or others or is suffering  
9 from some other serious mental condition or illness that  
10 requires prompt treatment or prompt diagnosis.

11 B. When an alleged delinquent child is delivered to  
12 a place of detention as provided in Section [~~32-2-12~~] 32A-2-12  
13 NMSA 1978, [~~a department designee~~] prior to the placing of the  
14 child in detention, a department designee, which may include  
15 non-departmental personnel, shall review the need for detention  
16 and shall release the child from custody unless detention is  
17 appropriate under criteria set forth in the Delinquency Act or  
18 has been ordered by the court pursuant to those criteria. If a  
19 child is placed in detention, the department may release the  
20 child within a one-hour period if the child's circumstances  
21 merit that release under the criteria.

22 C. If a child is taken into custody and is not  
23 released to the child's parent, guardian or custodian, the  
24 person taking the child into custody or the person in charge of  
25 the detention facility shall make a good faith attempt to give

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1 written notice thereof as soon as possible, and in no case  
2 later than twenty-four hours, to the child's parent, guardian  
3 or custodian and to the court, together with a statement of the  
4 reason for taking the child into custody.

5 D. In all cases when a child is taken into custody,  
6 the child shall be released to the child's parent, guardian or  
7 custodian in accordance with the conditions and time limits set  
8 forth in the Children's Court Rules [~~and Forms~~]. "

9 Section 6. Section 32A-2-11 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 40) is amended to read:

11 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN. --

12 [~~A. Unless ordered by the court pursuant to the~~  
13 ~~provisions of the Delinquency Act, a child taken into custody~~  
14 ~~for a delinquent act shall not be placed in detention prior to~~  
15 ~~the court's disposition unless probable cause exists to believe~~  
16 ~~that:~~

17 (1) ~~detention of the child is necessary to~~  
18 ~~protect the community;~~

19 (2) ~~the child will run away or be taken away~~  
20 ~~so as to be unavailable for proceedings of the court or its~~  
21 ~~officers;~~

22 (3) ~~the child will commit injury to others; or~~

23 (4) ~~if not detained, the child will cause~~  
24 ~~injury to himself or be subject to injury by others.~~

25 B. ~~The criteria for detention in this section shall~~

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1 ~~govern the decisions of all persons responsible for determining~~  
2 ~~whether detention is appropriate prior to the court's~~  
3 ~~disposition.~~

4 ~~C. The department shall promulgate guidelines by~~  
5 ~~January 1, 1994 to implement the criteria for detention set~~  
6 ~~forth in Subsection A of this section and shall collect data~~  
7 ~~regarding the application of the criteria.]~~

8 A child shall not be placed in detention prior to the court's  
9 disposition unless probable cause exists to believe that:

10 A. if not detained, the child will commit injury to  
11 the persons or property of others, cause self-inflicted injury  
12 or be subject to injury by others;

13 B. the child has no parent, guardian, custodian or  
14 other person able to provide adequate supervision and care for  
15 the child;

16 C. the child will run away or be taken away so as  
17 to be unavailable for proceedings of the court or its officers;  
18 or

19 D. the custody or detention is otherwise authorized  
20 by the provisions of the Children's Code."

21 Section 7. Section 32A-2-13 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 42) is amended to read:

23 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED  
24 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--  
25 DISPOSITION.--

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1           A. When a child who has been taken into custody is  
2 not released but is detained:

3           (1) a judicial determination of probable cause  
4 shall be made by a judge or special master or magistrate within  
5 forty-eight hours, including Saturdays, Sundays and legal  
6 holidays, except for children taken into custody under an  
7 arrest warrant pursuant to the Children's Court Rules [~~and~~  
8 ~~Forms~~]. A statement by a law enforcement officer, which shall  
9 include the charges, may be the basis of a probable cause  
10 determination. The statement shall be sworn and attested to  
11 and presented to the court by a law enforcement officer in  
12 person or by facsimile. The probable cause determination shall  
13 be nonadversarial, may be held in the absence of the child and  
14 counsel and may be conducted by telephone. If the court finds  
15 no probable cause to believe the child committed an offense,  
16 the child shall be released;

17           (2) a petition shall be filed within forty-  
18 eight hours from the time the child is taken into custody,  
19 excluding Saturdays, Sundays and legal holidays, and if not  
20 filed within the stated time, the child shall be released upon  
21 the written authority of the children's court attorney; and

22           (3) a detention hearing shall be held within  
23 twenty-four hours, excluding Saturdays, Sundays and legal  
24 holidays, from the time of filing the petition to determine  
25 whether continued detention is required pursuant to the

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1 criteria established by the Children's Code.

2 B. The judge may appoint one or more persons to  
3 serve as special master on a full- or part-time basis for the  
4 purpose of holding detention hearings. A juvenile probation  
5 and parole officer shall not be appointed as a special master.  
6 The judge shall approve all contracts with special masters and  
7 shall fix their hourly compensation, subject to the approval of  
8 the director of the administrative office of the courts.

9 C. Notice of the detention hearing, either oral or  
10 written, stating the time, place and purpose of the hearing  
11 shall be given by the person designated by the court to the  
12 child's parents, guardian or custodian, if they can be found,  
13 and to the child. The department shall be provided with  
14 reasonable oral or written notification and an opportunity to  
15 be heard. At any hearing held pursuant to this subsection, the  
16 department may appear as a party.

17 D. At the commencement of the detention hearing,  
18 the judge or special master shall advise the parties of their  
19 basic rights provided in the Children's Code and shall appoint  
20 counsel, guardians and custodians, if appropriate.

21 E. If the judge or special master finds that the  
22 child's detention is appropriate under the criteria established  
23 by the Children's Code, the judge or special master shall order  
24 detention in an appropriate facility in accordance with the  
25 Children's Code.

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1 F. If the judge or special master finds that  
2 detention of the child is not appropriate under the criteria  
3 established by the Children's Code, the judge or special master  
4 shall order the release of the child, but, in so doing, may  
5 order one or more of the following conditions:

6 (1) place the child in the custody of a  
7 parent, guardian or custodian or under the supervision of an  
8 agency agreeing to supervise the child;

9 (2) place restrictions on the child's travel,  
10 association with other persons or place of abode during the  
11 period of the child's release; or

12 (3) impose any other condition deemed  
13 reasonably necessary and consistent with the criteria for  
14 detaining children established by the Children's Code,  
15 including a condition requiring that the child return to  
16 custody as required.

17 G. An order releasing a child on any conditions  
18 specified in this section may at any time be amended to impose  
19 additional or different conditions of release or to return the  
20 child to custody or detention for failure to conform to the  
21 conditions originally imposed.

22 H. At the detention hearing, all relevant and  
23 material evidence helpful in determining the need for detention  
24 may be admitted by the judge or special master even though it  
25 would not be admissible in a hearing on the petition.

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1 I. If the child is not released at the detention  
2 hearing and a parent, guardian or custodian was not notified of  
3 the hearing and did not appear or waive appearance at the  
4 detention hearing, the judge or special master shall rehear the  
5 detention matter without unnecessary delay upon the filing of  
6 an affidavit stating the facts and a motion for rehearing. "

7 Section 8. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 61) is amended to read:

9 "32A-2-32. CONFIDENTIALITY--RECORDS. --

10 A. All social records, including diagnostic  
11 evaluation, psychiatric reports, medical reports, social  
12 studies reports, pre-parole reports and supervision histories  
13 obtained by the juvenile probation office, parole officers and  
14 parole board or in possession of the department, are privileged  
15 and shall not be disclosed directly or indirectly to the  
16 public.

17 B. The records described in Subsection A of this  
18 section shall be open to inspection only by:

- 19 (1) court personnel;  
20 (2) court appointed special advocates;  
21 (3) the child's guardian ad litem, parent,  
22 custodian or attorney;  
23 (4) department personnel;  
24 (5) any local substitute care review board or  
25 any agency contracted to implement local substitute care review

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1 boards;

2 (6) corrections department personnel;

3 (7) law enforcement officials;

4 (8) district attorneys;

5 (9) any state government social services  
6 agency in any state;

7 (10) those persons or entities of a child's  
8 Indian tribe specifically authorized to inspect such records  
9 pursuant to the federal Indian Child Welfare Act of 1978 or any  
10 regulations promulgated thereunder;

11 (11) tribal juvenile justice system and social  
12 service representatives;

13 (12) a foster parent, if the records are those  
14 of a child currently placed with that foster parent or of a  
15 child being considered for placement with that foster parent  
16 when the records concern the social, medical, psychological or  
17 educational needs of the child;

18 (13) school personnel involved with the child  
19 if the records concern the child's social or educational needs;

20 (14) health care or mental health  
21 professionals involved in the evaluation or treatment of the  
22 child, the child's parents, guardians or custodian or other  
23 family members;

24 (15) representatives of the protection and  
25 advocacy system, pursuant to the provisions of the federal

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1 Developmental Disabilities Assistance and Bill of Rights Act  
2 and the federal Protection and Advocacy for Mentally Ill  
3 Individuals Amendments Act of 1991; and

4 (16) any other person or entity, by order of  
5 the court, having a legitimate interest in the case or the work  
6 of the court.

7 C. Whoever intentionally and unlawfully releases  
8 any information or records closed to the public pursuant to  
9 this section or releases or makes other unlawful use of records  
10 in violation of this section is guilty of a petty misdemeanor. "

11 Section 9. Section 32A-2-33 NMSA 1978 (being Laws 1999,  
12 Chapter 216, Section 1) is amended to read:

13 "32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL  
14 PREMISES--DETENTION--HEARING. --

15 A. If a public school administrator or employee has  
16 reasonable cause to believe that a child is in possession of or  
17 has been in possession of a firearm on school premises in  
18 violation of [~~the federal Gun-Free Schools Act of 1994 or~~]  
19 Section 30-7-2.1 NMSA 1978, the administrator or employee shall  
20 immediately report the child's actions to a law enforcement  
21 agency and the [~~children, youth and families~~] department.

22 B. Upon receipt of a report pursuant to Subsection  
23 A of this section, the law enforcement agency shall immediately  
24 conduct an investigation to determine if there is probable  
25 cause to believe that the child possessed a firearm on school

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1 premises.

2 C. If the law enforcement agency determines there  
3 is probable cause to believe that the child possessed a firearm  
4 on school premises, the law enforcement agency shall  
5 immediately ~~[take the child into custody and deliver the child~~  
6 ~~to a detention facility licensed by the department. After]~~  
7 contact probation services, which shall determine whether the  
8 child may be released or must be detained as required by the  
9 risk assessment instrument. If the child is [delivered to a  
10 detention facility] detained, the law enforcement agency shall  
11 take the child into custody and deliver the child to a  
12 detention facility licensed by the department, and the  
13 department shall comply with the notification provisions set  
14 forth in Subsection C of Section 32A-2-10 NMSA 1978. The child  
15 shall be detained in the detention facility, pending a  
16 detention hearing pursuant to the provisions of Section  
17 32A-2-13 NMSA 1978.

18 D. As used in this section, "firearm" means any  
19 weapon ~~[which]~~ that will or is designed to or may readily be  
20 converted to expel a projectile by the action of an explosion;  
21 the frame or receiver of any such weapon; or any firearm  
22 muffler or firearm silencer. "Firearm" includes any handgun,  
23 rifle or shotgun."

24 Section 10. Section 32A-4-29 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 123, as amended) is amended to read:

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1 "32A-4-29. TERMINATION PROCEDURE. --

2 A. A motion to terminate parental rights may be  
3 filed at any stage of the abuse or neglect proceeding. The  
4 proceeding may be initiated by any of the following:

- 5 (1) the department;
- 6 (2) a licensed child placement agency; or
- 7 (3) any other person having a legitimate  
8 interest in the matter, including the child's guardian ad  
9 litem, a petitioner for adoption, a foster parent or a relative  
10 of the child.

11 B. The motion for termination of parental rights  
12 shall be signed, verified by the moving party and filed with  
13 the court. The motion shall set forth:

- 14 (1) the date, place of birth and marital  
15 status of the child, if known;
- 16 (2) the grounds for termination and the facts  
17 and circumstances supporting the grounds for termination;
- 18 (3) the names and addresses of the persons or  
19 authorized agency or agency officer to whom custody might be  
20 transferred;
- 21 (4) whether the child resides or has resided  
22 with a foster parent who desires to adopt this child;
- 23 (5) whether the motion is in contemplation of  
24 adoption;
- 25 (6) the relationship or legitimate interest of

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1 the moving party to the child; and

2 (7) whether the child is subject to the  
3 federal Indian Child Welfare Act of 1978 and, if so:

4 (a) the tribal affiliations of the  
5 child's parents;

6 (b) the specific actions taken by the  
7 moving party to notify the parents' tribes and the results of  
8 the contacts, including the names, addresses, titles and  
9 telephone numbers of the persons contacted. Copies of any  
10 correspondence with the tribes shall be attached as exhibits to  
11 the petition; and

12 (c) what specific efforts were made to  
13 comply with the placement preferences set forth in the federal  
14 Indian Child Welfare Act of 1978 or the placement preferences  
15 of the appropriate Indian tribes.

16 C. A parent who has not previously been a party to  
17 the proceeding shall be named in the motion and shall become a  
18 party to the proceeding unless the court determines that the  
19 parent has not established a protected liberty interest in his  
20 relationship with the child.

21 D. Notice of the filing of the motion, accompanied  
22 by a copy of the motion, shall be served by the moving party on  
23 all other parties, the foster parent, preadoptive parent or  
24 relative providing care for the child with whom the child is  
25 residing, foster parents with whom the child has resided for

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1 six months within the previous twelve months, the custodian of  
2 the child, any person appointed to represent any party and any  
3 other person the court orders. Service shall be in accordance  
4 with the Rules of Civil Procedure for the District Courts for  
5 the service of motions in a civil action in this state, except  
6 that foster parents and attorneys of record in this proceeding  
7 shall be served by certified mail. The notice shall state  
8 specifically that the person served shall file a written  
9 response to the motion within twenty days if the person intends  
10 to contest the termination. In any case involving a child  
11 subject to the federal Indian Child Welfare Act of 1978, notice  
12 shall also be sent by certified mail to the tribes of the  
13 child's parents and upon any "Indian custodian" as that term is  
14 defined in 25 U.S.C. Section 1903(6). Further notice shall not  
15 be required on a parent who has been provided notice previously  
16 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make  
17 an appearance.

18 E. If the identity or whereabouts of a person  
19 entitled to service are unknown, the moving party shall file a  
20 motion for an order granting service by publication supported  
21 by the affidavit of the moving party or his agent or attorney  
22 detailing the efforts made to locate the person entitled to  
23 service. Upon being satisfied that reasonable efforts to  
24 locate the person entitled to service have been made and that  
25 information as to the identity or whereabouts of the person is

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1 still insufficient to effect service in accordance with the  
2 Rules of Civil Procedure for the District Courts, the court  
3 shall order service by publication pursuant to the Rules of  
4 Civil Procedure for the District Courts.

5 F. After a motion for the termination of parental  
6 rights is filed, the parent shall be advised of the right to  
7 counsel unless the parent is already represented by counsel.  
8 Counsel shall be appointed, upon request, for any parent who is  
9 unable to obtain counsel due to financial reasons or, if in the  
10 court's discretion, the interests of justice require  
11 appointment of counsel.

12 G. The court shall assure that a guardian ad litem  
13 represents the child in all proceedings for the termination of  
14 parental rights.

15 H. When a motion to terminate parental rights is  
16 filed, the moving party shall request a hearing on the motion.  
17 The hearing date shall be at least thirty days, but no more  
18 than sixty days, after service is effected upon the parties  
19 entitled to service under this section.

20 I. In any action for the termination of parental  
21 rights brought by a party other than the department and  
22 involving a child in the custody of the department, the  
23 department may:

24 (1) litigate a motion for the termination of  
25 parental rights that was initially filed by another party; or

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1 (2) move that the motion for the termination  
2 of parental rights be found premature and denied.

3 J. When a motion to terminate parental rights is  
4 filed, the department shall perform concurrent planning.

5 K. When a child has been in [~~the custody of the~~  
6 ~~department~~] foster care for not less than fifteen of the  
7 previous twenty-two months, the department shall file a motion  
8 to terminate parental rights, unless:

9 (1) a parent has made substantial progress  
10 toward eliminating the problem that caused the child's  
11 placement in foster care; it is likely that the child will be  
12 able to safely return to the parent's home within three months;  
13 and the child's return to the parent's home will be in the  
14 child's best interests;

15 (2) the child has a close and positive  
16 relationship with a parent and a permanent plan that does not  
17 include termination of parental rights will provide the most  
18 secure and appropriate placement for the child;

19 (3) the child is thirteen years of age or  
20 older, is firmly opposed to termination of parental rights and  
21 is likely to disrupt an attempt to place him with an adoptive  
22 family;

23 (4) a parent is terminally ill, but in  
24 remission, and does not want his parental rights to be  
25 terminated; provided that the parent has designated a guardian

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1 for his child;

2 (5) the child is not capable of functioning if  
3 placed in a family setting. In such a case, the court shall  
4 reevaluate the status of the child every ninety days unless  
5 there is a final court determination that the child cannot be  
6 placed in a family setting;

7 (6) grounds do not exist for termination of  
8 parental rights;

9 (7) the child is an unaccompanied, refugee  
10 minor and the situation regarding the child involves  
11 international legal issues or compelling foreign policy issues;  
12 or

13 (8) adoption is not an appropriate plan for  
14 the child.

15 L. For purposes of this section, a child shall be  
16 considered to have entered foster care on the earlier of:

17 (1) the date of the first judicial finding  
18 that the child has been abused or neglected; or

19 (2) the date that is sixty days after the date  
20 on which the child was removed from the home.

21 [~~L.~~] M. The grounds for any attempted termination  
22 shall be proved by clear and convincing evidence. In any  
23 proceeding involving a child subject to the federal Indian  
24 Child Welfare Act of 1978, the grounds for any attempted  
25 termination shall be proved beyond a reasonable doubt and shall

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1 meet the requirements set forth in 25 U.S.C. Section 1912(f).

2 [M-] N. When the court terminates parental rights,  
3 it shall appoint a custodian for the child and fix  
4 responsibility for the child's support.

5 [N-] O. In any termination proceeding involving a  
6 child subject to the federal Indian Child Welfare Act of 1978,  
7 the court shall in any termination order make specific findings  
8 that the requirements of that act have been met.

9 [O-] P. A judgment of the court terminating  
10 parental rights divests the parent of all legal rights and  
11 privileges and dispenses with both the necessity for the  
12 consent to or receipt of notice of any subsequent adoption  
13 proceeding concerning the child. A judgment of the court  
14 terminating parental rights shall not affect the child's rights  
15 of inheritance from and through the child's biological  
16 parents. "

17 Section 11. Section 32A-5-3 NMSA 1978 (being Laws 1993,  
18 Chapter 77, Section 130, as amended) is amended to read:

19 "32A-5-3. DEFINITIONS.--As used in the Adoption Act:

20 A. "adoptee" means a person who is the subject of  
21 an adoption petition;

22 B. "agency" means a person certified, licensed or  
23 otherwise specially empowered by law to place a child in a home  
24 in this or any other state for the purpose of adoption;

25 C. "agency adoption" means an adoption when the

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1 adoptee is in the custody of an agency prior to placement;

2 D. "acknowledged father" means a father who:

3 (1) acknowledges paternity of the adoptee  
4 pursuant to the putative father registry, as provided for in  
5 Section 32A-5-20 NMSA 1978;

6 (2) is named, with his consent, as the  
7 adoptee's father on the adoptee's birth certificate;

8 (3) is obligated to support the adoptee under  
9 a written voluntary promise or pursuant to a court order; or

10 (4) has openly held out the adoptee as his own  
11 child by establishing a custodial, personal or financial  
12 relationship with the adoptee as follows:

13 (a) for an adoptee under six months old  
14 at the time of placement: 1) has initiated an action to  
15 establish paternity; 2) is living with the adoptee at the time  
16 the adoption petition is filed; 3) has lived with the mother a  
17 minimum of ninety days during the two-hundred-eighty-day-period  
18 prior to the birth or placement of the adoptee; 4) has lived  
19 with the adoptee within the ninety days immediately preceding  
20 the adoptive placement; 5) has provided reasonable and fair  
21 financial support to the mother during the pregnancy and in  
22 connection with the adoptee's birth in accordance with his  
23 means and when not prevented from doing so by the person or  
24 authorized agency having lawful custody of the adoptee or the  
25 adoptee's mother; 6) has continuously paid child support to the

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1 mother since the adoptee's birth in an amount at least equal to  
2 the amount provided in Section 40-4-11.1 NMSA 1978, or has  
3 brought current any delinquent child support payments; or 7)  
4 any other factor the court deems necessary to establish a  
5 custodial, personal or financial relationship with the adoptee;  
6 or

7 (b) for an adoptee over six months old  
8 at the time of placement: 1) has initiated an action to  
9 establish paternity; 2) has lived with the adoptee within the  
10 ninety days immediately preceding the adoptive placement; 3)  
11 has continuously paid child support to the mother since the  
12 adoptee's birth in an amount at least equal to the amount  
13 provided in Section 40-4-11.1 NMSA 1978, or is making  
14 reasonable efforts to bring delinquent child support payments  
15 current; 4) has contact with the adoptee on a monthly basis  
16 when physically and financially able and when not prevented by  
17 the person or authorized agency having lawful custody of the  
18 adoptee; or 5) has regular communication with the adoptee, or  
19 with the person or agency having the care or custody of the  
20 adoptee, when physically and financially unable to visit the  
21 adoptee and when not prevented from doing so by the person or  
22 authorized agency having lawful custody of the adoptee;

23 E. "alleged father" means an individual whom the  
24 biological mother has identified as the biological father, but  
25 the individual has not acknowledged paternity or registered

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1 with the putative father registry as provided for in Section  
2 32A-5-20 NMSA 1978;

3 F. "consent" means a document:

4 (1) signed by a biological parent whereby the  
5 parent grants consent to the adoption of the parent's child by  
6 another; or

7 (2) whereby the department or an agency grants  
8 its consent to the adoption of a child in its custody;

9 G. "counselor" means a person certified by the  
10 department to conduct adoption counseling in independent  
11 adoptions;

12 H. "department adoption" means an adoption when the  
13 child is in the custody of the department;

14 I. "former parent" means a parent whose parental  
15 rights have been terminated or relinquished;

16 J. "full disclosure" means mandatory and continuous  
17 disclosure by the investigator, agency, department or  
18 petitioner throughout the adoption proceeding and after  
19 finalization of the adoption of all known, nonidentifying  
20 information regarding the adoptee, including:

- 21 (1) health history;  
22 (2) psychological history;  
23 (3) mental history;  
24 (4) hospital history;  
25 (5) medication history;

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- 1 (6) genetic history;
- 2 (7) physical descriptions;
- 3 (8) social history;
- 4 (9) placement history; and
- 5 (10) education;

6 K. "independent adoption" means an adoption when  
7 the child is not in the custody of the department or an agency;

8 L. "investigator" means an individual certified by  
9 the department to conduct pre-placement studies and post-  
10 placement reports;

11 M. "office" means a place for the regular  
12 transaction of business or performance of particular services;

13 N. "parental rights" means all rights of a parent  
14 with reference to a child, including parental right to control,  
15 to withhold consent to an adoption or to receive notice of a  
16 hearing on a petition for adoption;

17 O. "placement" means the selection of a family for  
18 an adoptee or matching of a family with an adoptee and physical  
19 transfer of the adoptee to the family in all adoption  
20 proceedings, except in adoptions filed pursuant to Paragraphs  
21 (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in  
22 which case placement occurs when the parents consent to the  
23 adoption, parental rights are terminated or parental consent is  
24 implied;

25 P. "post-placement report" means a written

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1 evaluation of the adoptive family and the adoptee after the  
2 adoptee is placed for adoption;

3 Q. "pre-placement study" means a written evaluation  
4 of the adoptive family, the adoptee's biological family and the  
5 adoptee;

6 R. "presumed father" means:

7 (1) the husband of the biological mother at  
8 the time the adoptee was born;

9 (2) an individual who was married to the  
10 mother and either the adoptee was born during the term of the  
11 marriage or the adoptee was born within three hundred days  
12 after the marriage was terminated by death, annulment,  
13 declaration of invalidity or divorce; or

14 (3) before the adoptee's birth, an individual  
15 who attempted to marry the adoptee's biological mother by a  
16 marriage solemnized in apparent compliance with law, although  
17 the attempted marriage is or could be declared invalid and if  
18 the attempted marriage:

19 (a) could be declared invalid only by a  
20 court, the adoptee was born during the attempted marriage or  
21 within three hundred days after its termination by death,  
22 annulment, declaration of invalidity or divorce; or

23 (b) is invalid without a court order,  
24 the adoptee was born within three hundred days after the  
25 termination of cohabitation;

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1           S. "record" means any petition, affidavit, consent  
2 or relinquishment form, transcript or notes of testimony,  
3 deposition, power of attorney, report, decree, order, judgment,  
4 correspondence, document, photograph, invoice, receipt,  
5 certificate or other printed, written, videotaped or tape-  
6 recorded material pertaining to an adoption proceeding;

7           T. "relinquishment" means the document by which a  
8 parent relinquishes parental rights to the department or an  
9 agency to enable placement of the parent's child for adoption;

10          U. "resident" means a person who, prior to filing  
11 an adoption petition, has lived in the state for at least six  
12 months immediately preceding filing of the petition for  
13 adoption or a person who has become domiciled in the state by  
14 establishing legal residence with the intention of maintaining  
15 the residency indefinitely; [and]

16          V. "stepparent adoption" means an adoption of the  
17 adoptee by the adoptee's stepparent when the adoptee has lived  
18 with the stepparent for at least one year following the  
19 marriage of the stepparent to the custodial parent;

20          W. "accrediting entity" means an entity that has  
21 entered into an agreement with the United States secretary of  
22 state, under the federal Intercountry Adoption Act of 2000 and  
23 regulations adopted by the United States secretary of state  
24 pursuant to that act, to accredit agencies and approve persons  
25 providing adoption services in connection with convention

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1 adoptions;

2 X. "adoption service" means:

3 (1) identifying a child for adoption and  
4 arranging an adoption;

5 (2) securing necessary consent to termination  
6 of parental rights and to adoption;

7 (3) performing a background study on a child  
8 or a home study on a prospective adoptive parent and reporting  
9 on the study;

10 (4) making determinations of the best  
11 interests of a child and the appropriateness of adoptive  
12 placement for the child;

13 (5) post-placement monitoring of a case until  
14 final adoption; and

15 (6) when made necessary by disruption before  
16 final adoption, assuming custody and providing child care or  
17 any other social service pending an alternative placement;

18 Y. "providing", with respect to an adoption  
19 service, includes facilitating the provision of the service;

20 Z. "convention adoption" means an adoption of a  
21 child resident in a foreign country party to the Convention on  
22 Protection of Children and Cooperation in Respect of  
23 Intercountry Adoption by a United States citizen, or an  
24 adoption of a child resident in the United States by an  
25 individual residing in another convention country; and

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1                   AA. "convention country" means a country that is a  
2 party to the Hague Adoption Convention, dated May 29, 1993. "

3                   Section 12. Section 32A-5-6 NMSA 1978 (being Laws 1993,  
4 Chapter 77, Section 133, as amended) is amended to read:

5                   "32A-5-6. AUTHORITY OF THE DEPARTMENT. --

6                   A. The department may adopt and promulgate  
7 necessary [~~regulations~~] rules and forms for the administration  
8 of the Adoption Act, but the [~~regulations~~] rules shall not  
9 conflict with the provisions of the Adoption Act.

10                  B. The department has the authority to provide or  
11 request additional information from an investigator or an  
12 attorney representing any person involved in any action filed  
13 pursuant to the provisions of the Adoption Act.

14                  C. The department has the authority to intervene in  
15 any action filed pursuant to the provisions of the Adoption  
16 Act. The intervention shall be effected when legal counsel for  
17 the department files a motion for an entry of appearance and an  
18 appropriate response.

19                  D. The department shall be served by mail by the  
20 attorney for the petitioner with copies of all pleadings filed  
21 in any action pursuant to the provisions of the Adoption Act,  
22 except for copies of the petition for adoption, the request for  
23 placement and the decree of adoption, which shall be served as  
24 provided in Section 32A-5-7 NMSA 1978.

25                  E. A criminal records check shall be made as

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1 follows:

2 (1) each petitioner shall submit a set of  
3 fingerprints to the department, and shall agree that the  
4 department may use the fingerprint card to obtain a nationwide  
5 criminal records check on the petitioner. The department may  
6 receive an adoption petitioner's nationwide criminal history  
7 record by submitting the fingerprint card to the department of  
8 public safety, which shall accept from the department the  
9 fingerprints for the purpose of processing a nationwide  
10 criminal history screening through the federal bureau of  
11 investigation;

12 (2) the department may promulgate rules to  
13 implement fingerprint submission procedures, fees,  
14 confidentiality, time frames for petitioners' nationwide  
15 criminal history screening and procedures for clarifying  
16 incomplete or confusing criminal history information; and

17 (3) all criminal history records obtained  
18 pursuant to this section by the department are confidential.  
19 The department may use federal bureau of investigation criminal  
20 history records for purposes of reviewing adoption matters  
21 under the Adoption Act. No criminal history record obtained  
22 pursuant to this section shall be used for any purpose other  
23 than in connection with an adoption. Except on court order or  
24 with the written consent of the petitioner, criminal records  
25 obtained pursuant to this section and the information contained

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1 in the records shall not be released or otherwise disclosed to  
2 any other person or agency. A person who discloses  
3 confidential records or information in violation of this  
4 section is guilty of a misdemeanor and shall be sentenced  
5 pursuant to the provisions of Section 31-19-1 NMSA 1978.

6 F. The department is designated and authorized to  
7 act on behalf of the state as an accrediting entity, under the  
8 provisions of the federal Intercountry Adoption Act of 2000 and  
9 regulations adopted by the United States secretary of state  
10 pursuant to that act.

11 G. The department is authorized to enter into  
12 written agreements with the United States secretary of state  
13 for purposes of the federal Intercountry Adoption Act of 2000  
14 and regulations adopted by the United States secretary of state  
15 pursuant to that act.

16 H. The department is authorized to assess fees for  
17 the costs of accreditation of agencies and approval of persons  
18 in connection with convention adoptions, which fees shall be  
19 prescribed by rule, and shall be approved by the United States  
20 department of state. The fees shall not exceed the costs of  
21 the services provided by the department.

22 I. The department may adopt and promulgate  
23 necessary rules and forms for the administration of the  
24 Adoption Act, but the rules shall not conflict with the  
25 provisions of the Adoption Act."

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1           Section 13. Section 32A-5-26 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 153, as amended) is amended to read:

3           "32A-5-26. PETITION--CONTENT.--A petition for adoption  
4 shall be filed and verified by the petitioner and shall allege:

5           A. the full name, age and place and duration of  
6 residence of the petitioner and, if married, the place and date  
7 of marriage; the date and place of any prior marriage,  
8 separation or divorce; and the name of any present or prior  
9 spouse;

10           B. the date and place of birth of the adoptee, if  
11 known;

12           C. the places where the adoptee has lived within  
13 the past three years and the names and addresses of the persons  
14 with whom the adoptee has lived, unless the adoptee is in the  
15 custody of an agency or the department, in which case the  
16 petitioner shall state the name and address of the agency or  
17 the department's county office from which the child was placed;

18           D. the birth name of the adoptee, any other names  
19 by which the adoptee has been known and the adoptee's proposed  
20 new name; provided that in the case of an agency adoption, if  
21 the petitioner and the biological parents have not agreed to  
22 the release of the adoptee's identity to the other person, the  
23 birth name and any other names by which the adoptee has been  
24 known shall be filed with the court as separate documents at  
25 the time the petition is filed;

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1           E. where the adoptee is residing at the time of the  
2 filing of the petition and, if the adoptee is not living with  
3 the petitioner, when the adoptee will commence living with the  
4 petitioner;

5           F. that the petitioner desires to establish a  
6 parent and child relationship with the adoptee and that the  
7 petitioner is a fit and proper person able to care and provide  
8 for the adoptee's welfare;

9           G. the existence of any court orders, including  
10 placement orders, that are known to the petitioner and that  
11 regulate custody, visitation or access to the adoptee, copies  
12 of which shall accompany and be attached to the petition as  
13 exhibits;

14           H. the relationship, if any, of the petitioner to  
15 the adoptee;

16           I. the name and address of the placing agency, if  
17 any;

18           J. the names and addresses of all persons from whom  
19 consents or relinquishments are required, attaching copies of  
20 those obtained and alleging the facts that excuse or imply the  
21 consents or relinquishments of the others; provided that if the  
22 petitioner has not agreed to the release of his identity to the  
23 parent or if the parent has not agreed to the release of his  
24 identity to the petitioner, the names and addresses of all  
25 persons from whom consents or relinquishments are required

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1 shall be filed with the court as separate documents at the time  
2 the petition for adoption is filed;

3 K. whether the adoption will be an open adoption,  
4 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

5 L. when consent of the child's father is alleged to  
6 be unnecessary, the results of a search of the putative father  
7 registry;

8 M. whether the adoptee is an Indian child and, if  
9 so, the petition shall allege:

10 (1) the tribal affiliation of the adoptee's  
11 parents;

12 (2) what specific actions have been taken and  
13 by whom to notify the parents' tribe and the results of the  
14 contact, including the names, addresses, titles and telephone  
15 numbers of the persons contacted. Copies of any correspondence  
16 with the Indian tribe shall be attached as exhibits to the  
17 petition; and

18 (3) what specific efforts were made to comply  
19 with the placement preferences set forth in the federal Indian  
20 Child Welfare Act of 1978 or the placement preferences of the  
21 appropriate Indian tribe;

22 N. whether the adoption is subject to the  
23 Interstate Compact on the Placement of Children and, if so, a  
24 copy of the interstate compact form indicating approval shall  
25 be attached as an exhibit to the petition;

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1           0. whether the adoptee is foreign born and, if so,  
2 copies of the child's passport and United States visa and of  
3 all documents demonstrating that the adoptee is legally free  
4 for adoption; [~~and~~]

5           P. whether the adoption is a convention adoption,  
6 and if so, the petition shall allege whether the sending  
7 country is a convention country; whether the agency or  
8 individual providing adoption services, as defined by the  
9 federal Intercountry Adoption Act of 2000, has been approved as  
10 an accredited agency; and that the United States secretary of  
11 state certificate has been filed with the court; and

12           [P.] Q. the name, address and telephone number of  
13 the agency or individual who has agreed to conduct the post-  
14 placement report in accordance with Section 32A-5-31 NMSA 1978,  
15 if different than the agency or individual who prepared the  
16 pre-placement study in accordance with Section 32A-5-13 NMSA  
17 1978. "

18           Section 14. Section 32A-5-36 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 163, as amended) is amended to read:

20           "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF  
21 ADOPTION.--

22           A. The court shall conduct hearings on the petition  
23 for adoption so as to determine the rights of the parties in a  
24 manner that protects confidentiality. The petitioner and the  
25 adoptee shall attend the hearing unless the court for good

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1 cause waives a party's appearance. Good cause may include  
2 burdensome travel requirements.

3 B. The petitioner shall file all documents required  
4 pursuant to the Adoption Act and serve the department with  
5 copies of the [~~same~~] documents simultaneously with the request  
6 for hearing on the petition for adoption.

7 C. If any person who claims to be the biological  
8 father of the adoptee has appeared before the court and filed a  
9 written petition or response seeking custody and assuming  
10 financial responsibility of the adoptee, the court shall hear  
11 evidence as to the merits of the petition. If the court  
12 determines by a preponderance of the evidence that the person  
13 is not the biological father of the adoptee or that the child  
14 was conceived through an act of rape or incest, the petition  
15 shall be dismissed and the person shall no longer be a party to  
16 the adoption. If the court determines that the person is the  
17 biological father of the adoptee, the court shall further  
18 determine whether the person qualifies as a presumed or  
19 acknowledged father whose consent is necessary for adoption,  
20 pursuant to Section 32A-5-17 NMSA 1978. If the court  
21 determines that the person is the biological father, but does  
22 not qualify as a presumed or acknowledged father, the court  
23 shall adjudicate the person's rights pursuant to the provisions  
24 of the Adoption Act.

25 D. If the mother or father of the adoptee has

1 appeared before the court and filed a written petition that  
2 alleges the invalidity of the mother's or father's own consent  
3 or relinquishment for adoption previously filed in the adoption  
4 proceeding, the court shall hear evidence as to the merits of  
5 the petition. If the court determines that the allegations  
6 have not been proved by a preponderance of the evidence, the  
7 petition shall be dismissed. If the court determines that the  
8 allegations of the petition are true, the consent or  
9 relinquishment for adoption shall be held invalid, and the  
10 court shall determine, in the best interests of the adoptee,  
11 the person who shall have custody of the child.

12 E. The petitioner shall present and prove each  
13 allegation set forth in the petition for adoption by clear and  
14 convincing evidence.

15 F. The court shall grant a decree of adoption if it  
16 finds that the petitioner has proved by clear and convincing  
17 evidence that:

18 (1) the court has jurisdiction to enter a  
19 decree of adoption affecting the adoptee;

20 (2) the adoptee has been placed with the  
21 petitioner for a period of ninety days if the adoptee is under  
22 the age of one year at the time of placement or for a period of  
23 one hundred eighty days if the adoptee is one year of age or  
24 older at the time of placement, unless, for good cause shown,  
25 the requirement is waived by the court;

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1 (3) all necessary consents, relinquishments,  
2 terminations or waivers have been obtained;

3 (4) the post-placement report required by  
4 Section 32A-5-31 NMSA 1978 has been filed with the court;

5 (5) service of the petition for adoption has  
6 been made or dispensed with as to all persons entitled to  
7 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

8 (6) at least ninety days have passed since the  
9 filing of the petition for adoption, except the court may  
10 shorten or waive this period of time in cases in which the  
11 child is being adopted by a stepparent, a relative or a person  
12 named in the child's deceased parent's will pursuant to  
13 provisions of Section 32A-5-12 NMSA 1978;

14 (7) the petitioner is a suitable adoptive  
15 parent and the best interests of the adoptee are served by the  
16 adoption;

17 (8) if visitation between the biological  
18 family and the adoptee is contemplated, that the visitation is  
19 in the child's best interests;

20 (9) if the adoptee is foreign born, that the  
21 child is legally free for adoption and that the United States  
22 secretary of state certificate with respect to each convention  
23 adoption has been filed with the court;

24 (10) the results of the criminal records check  
25 required pursuant to provisions of Section 32A-5-14 NMSA 1978

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1 have been received and considered;

2 (11) if the adoptee is an Indian child, the  
3 requirements set forth in the federal Indian Child Welfare Act  
4 of 1978 have been met;

5 (12) when the child is an Indian child, the  
6 placement preferences set forth in the federal Indian Child  
7 Welfare Act of 1978 or the placement preferences of the  
8 appropriate Indian tribes have been followed or, if not  
9 followed, good cause for noncompliance has been clearly stated  
10 and supported, as required by the federal Indian Child Welfare  
11 Act of 1978 and provision has been made to ensure that the  
12 Indian child's cultural ties to the Indian child's tribe are  
13 protected and fostered; and

14 (13) if the adoption involves the interstate  
15 placement of the adoptee, the requirements of the Interstate  
16 Compact on the Placement of Children have been met.

17 G. In addition to the findings required by  
18 Subsection F of this section, the court in any decree of  
19 adoption shall make findings with respect to each allegation of  
20 the petition.

21 H. If the court determines that any of the  
22 requirements for a decree of adoption pursuant to provisions of  
23 Subsections E and F of this section have not been met or that  
24 the adoption is not in the best interests of the adoptee, the  
25 court shall deny the petition and determine, in the best

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1 interests of the adoptee, the person who shall have custody of  
2 the child.

3 I. The decree of adoption shall include the new  
4 name of the adoptee and shall not include any other name by  
5 which the adoptee has been known or the names of the former  
6 parents. The decree of adoption shall order that from the date  
7 of the decree, the adoptee shall be the child of the petitioner  
8 and accorded the status set forth in Section 32A-5-37 NMSA  
9 1978.

10 J. A decree of adoption shall be entered within six  
11 months of the filing of the petition if the adoptee is under  
12 the age of one year at the time of placement or twelve months  
13 if the adoptee is one year of age or older at the time of  
14 placement, except that the time may be extended by the court  
15 upon request of any of the parties or upon the court's own  
16 motion for good cause shown.

17 K. A decree of adoption may not be attacked upon  
18 the expiration of one year from the entry of the decree;  
19 provided, however, that in any adoption involving an Indian  
20 child, the Indian child's parent or Indian custodian may  
21 petition the court pursuant to the provisions of the federal  
22 Indian Child Welfare Act of 1978 to invalidate the adoption.

23 L. In any adoption involving an Indian child, the  
24 clerk of the court shall provide the secretary of the interior  
25 with a copy of any decree of adoption or adoptive placement

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1 order and other information as required by the federal Indian  
2 Child Welfare Act of 1978. "

3 Section 15. Section 32A-5-39 NMSA 1978 (being Laws 1993,  
4 Chapter 77, Section 166) is amended to read:

5 "32A-5-39. RECOGNITION OF FOREIGN DECREES. -- Every  
6 judgment terminating the parent-child relationship or  
7 establishing the relationship of parent and child by adoption  
8 issued pursuant to due process of law by the tribunals of any  
9 other jurisdiction within or without the United States shall be  
10 recognized in this state, so that the rights and obligations of  
11 the parties as to matters within the jurisdiction of this state  
12 shall be determined as though the judgment were issued by the  
13 courts of this state. A final adoption in another convention  
14 country, certified by the United States secretary of state  
15 pursuant to Subsection 301(a) or Section 303(3) of the federal  
16 Intercountry Adoption Act of 2000 shall be recognized as a  
17 final valid adoption. "

18 Section 16. Section 32A-15-3 NMSA 1978 (being Laws 1985,  
19 Chapter 103, Section 3 and also Laws 1985, Chapter 140, Section  
20 3, as amended) is amended to read:

21 "32A-15-3. CRIMINAL RECORDS CHECK--BACKGROUND CHECKS. --

22 A. Nationwide criminal record checks shall be  
23 conducted of all operators, staff and employees and prospective  
24 operators, staff and employees of child care facilities,  
25 including every facility or program having primary custody of

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1 children for twenty hours or more per week, juvenile detention,  
2 correction or treatment facilities, with the objective of  
3 protecting the children involved and promoting the children's  
4 safety and welfare while receiving service through such  
5 facilities or ~~[program]~~ programs.

6 B. ~~[The department shall conduct a background check~~  
7 ~~of]~~ All actual or prospective operators, staff and employees  
8 ~~[and prospective operators, staff and employees]~~ of child care  
9 facilities ~~[by submitting]~~ shall be fingerprinted and a  
10 fingerprint card for those individuals shall be submitted to  
11 the department of public safety and the federal bureau of  
12 investigation.

13 C. All criminal history records obtained pursuant  
14 to this section by the department are confidential. The  
15 department may use the federal bureau of investigation criminal  
16 history records in connection with review of prospective  
17 operators, staff and employees of child care facilities. No  
18 criminal history records obtained pursuant to this section  
19 shall be used for any purpose other than in connection with  
20 such review. Except on court order or with the written consent  
21 of the petitioner, criminal records obtained pursuant to this  
22 section and the information contained therein shall not be  
23 released or otherwise disclosed to any other person or agency.  
24 A person who discloses confidential records or information in  
25 violation of this section is guilty of a misdemeanor and shall

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1 be sentenced pursuant to the provisions of Subsection A of  
2 Section 31-19-1 NMSA 1978."

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